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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,884	07/16/2003	Marvin I. Fredberg	RAY-132J	9093

7590 02/08/2006

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Waltham, MA 02451-1018

EXAMINER
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SINGH, ARTI R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/620,884

Applicant(s)

FREDBERG ET AL.

Examiner

Ms. Arti Singh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 11/03/05 have been fully considered but they are not persuasive. Applicant's first traversal is that the Examiner has rejected the Application based upon an idea and not rejected the claims based on their limitations. Applicant is incorrect in their assumption. The Examiner has given the claim limitations their broadest possible meaning and searched them accordingly.
2. Applicant's second traversal deals with the 112-2<sup>nd</sup> rejection and whether or not the Examiner is "skilled" in the art. With regard to the 112-2<sup>nd</sup> rejection-the Examiner gave this rejection so that Applicant could further provide clarity that the specification or working examples did not provide. The reason this rejection was presented was because the terms flexible/flexibility, rigidity etc are considered to be relative terms, particularly since virtually anything will flex, if enough pressure is applied to it (See *Fredman v. Harris-Hub Co., Inc* (DC NIII) 163 USPQ 397. or *Hickory Springs Mfg. Co. v. Fredman Bros. Furniture Co., Inc.* (DC SIII) 171 USPQ 470. It should be noted that not only in this art area but also in almost 95 % of the technologies that are researched here at the Office, terms like "flexible and rigid" are considered relative terminology. Applicant has pointed to pages 6 and 8 to define what flexibility means but these again are not convincing. Perhaps Applicant should claim a degree or unit of flexibility, or show that their invention although having the same parts is actually different or distinguishable from that known in the prior art. It is the position of the Examiner that since Applicant fails to disclose or suggest a unit of measure for flexibility, and because the cited prior art discloses the same structural and chemical makeup, it's the Examiner's position is that the radomes of Green/Coffy would have some degree of flexibility also.

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With regard to the second part of this section where Applicant believes that the Examiner is “not skilled in the art” and wouldn’t know the difference between flexible and rigid- to this the Examiner contends that Applicant is reminded of candor when responding. Further, the power to make patentability decisions is not due to the Examiners “expertise”, but rather due to the statutory authority to do so. In re Nilssen 7 USPQ 2q 1500.

With regard to the combination rejection and the double patenting rejection - Applicant’s arguments cannot take the place of evidence. It is suggested that Applicant provide data in a Declaration/Affidavit format that indicates that the combination of Greene and Coffy do not teach a flexible radomes but a rigid one, because the prior art fails to specifically state whether or not their structures are one or the other, that is flexible or rigid. Additionally, Applicant’s claim are open-ended and does not preclude the use of additional layers that may be found in the cited prior art.

All previously made rejections are maintained.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

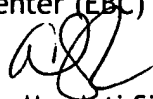
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-F 9-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ms. Arti Singh  
Primary Examiner  
Art Unit 1771

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